

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

NEW NGC, INC.,

Plaintiff,

v.

ACE AMERICAN INSURANCE  
COMPANY, AMERICAN GUARANTEE &  
LIABILITY INSURANCE COMPANY,  
LIBERTY INSURANCE UNDERWRITERS,  
INC., and NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, PA,

Defendants.

Civil Action No. 3:10-cv-22

JURY TRIAL DEMANDED

**NOTICE OF REMOVAL UNDER 28 U.S.C. § 1446(a), (b)(DIVERSITY)**

**TO THE CLERK OF COURT:**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant ACE American Insurance Company (hereafter, "Removal Defendant"), by its attorneys, states the following in support of its Notice of Removal:

1. On or about December 16, 2009, Plaintiff New NGC, Inc., commenced a civil action in the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina, titled New NGC, Inc. v. ACE American Insurance Company, et al., Docket No. 09-CVS-29981 (the "Complaint").

2. A copy of the Summons and Complaint was received by the North Carolina Department of Insurance on December 22, 2009, and forwarded by certified mail on December 23, 2009 to Removing Defendant.

3. A true and correct copy of all process, pleadings and orders received by Removing Defendant is attached as **Exhibit A** and Removing Defendant has requested a complete copy of the State Court file to be filed in this Court.

4. The time for filing this Notice of Removal under 28 U.S.C. § 1446 has not yet expired.

5. Removal of this action is based upon 28 U.S.C. § 1441 in that this is a civil action brought in a state court of which the district courts have original jurisdiction under 28 U.S.C. § 1332.

6. There is complete diversity of citizenship between Plaintiff and Defendants in this action because: (a) Plaintiff New NGC, Inc. is incorporated under the laws of Delaware with its principal place of business in Charlotte, NC; (b) Defendant American Guarantee & Liability Insurance Company is incorporated under the laws of New York and has its principal place of business in Illinois; (c) Defendant Liberty Insurance Underwriters, Inc. is incorporated under the laws of Massachusetts and has its principal place of business in New York; (d) Defendant National Union Fire Insurance Company of Pittsburg, PA is incorporated under the laws of Pennsylvania and has its principal place of business in New York; and (e) Removing Defendant is incorporated under the laws of Pennsylvania and has its principal place of business in Pennsylvania.

7. Based upon the allegations in the Complaint and information available to it, Removing Defendant has a good faith belief that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Specifically, Plaintiff has demanded payment of alleged costs and damages regarding claims of approximately 15 individual claimants and one

class action related to allegedly defective drywall products. The class action complaint, for example, is pending in the United States District Court, District of Arizona, and alleges that the amount in controversy exceeds \$5,000,000, exclusive of interests and costs.

8. Counsel for Removing Defendant has consulted with James W. Bryan, counsel for Defendant American Guarantee & Liability Insurance Company, and Mr. Bryan consents to the removal of this action to Federal Court on behalf of American Guarantee & Liability Insurance Company.

9. Counsel for Removing Defendant has consulted with Hatcher B. Kincheloe, counsel for Defendant Liberty Insurance Underwriters, Inc., and Mr. Kincheloe consents to the removal of this action to Federal Court on behalf of Liberty Insurance Underwriters, Inc.

10. Counsel for Removing Defendant has consulted with Susan K. Burkhart, counsel for Defendant National Union Fire Insurance Company of Pittsburgh, PA, and Ms. Burkhart consents to the removal of this action to Federal Court on behalf of National Union Fire Insurance Company of Pittsburgh, PA.

WHEREFORE, Removing Defendant respectfully requests that the Court enter an order removing Docket No. 09-CVS-29981 of the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina to this Court for further proceedings and that this Court take jurisdiction herein and make such further orders as may be just and proper.

*- Signature on Next Page -*

Respectfully submitted this 20<sup>th</sup> day of January, 2010.

COZEN O'CONNOR

By: s/ Kimberly Sullivan

Kimberly Sullivan, Esquire  
NC State Bar No. 23480  
301 South College Street, Suite 2100  
Charlotte, N.C. 28202  
Tel. No.: (704) 376-3400  
E-mail: [ksullivan@cozen.com](mailto:ksullivan@cozen.com)

Joseph A. Ziemianski, Esquire  
(*Pro Hac Admission pending*)  
Cozen O'Connor  
One Houston Center  
1221 McKinney Street, Suite 2900  
Houston, Texas 77010  
Tel: (832) 214-3920  
E-mail: [jziemianski@cozen.com](mailto:jziemianski@cozen.com)

***Attorneys for the Removing Defendant  
ACE American Insurance Company***

### **CERTIFICATE OF SERVICE**

I, Kimberly Sullivan, hereby certify that the foregoing Notice of Removal was served on all counsel of record this 20<sup>th</sup> day of January, 2010, by mailing a true and accurate copy to counsel of record addressed as follows:

#### **Counsel for Plaintiff New NGC, Inc.:**

R. Steven DeGeorge, Esq.  
Robinson, Bradshaw & Hinson, PA  
101 North Tryon Street, Ste. 1900  
Charlotte, NC 28246  
[sdegeorge@rbh.com](mailto:sdegeorge@rbh.com)

Michel Y. Horton, Esq.  
Davis S. Cox, Esq.  
Jennifer M. Kennedy  
Morgan, Lewis & Bockius, LLP  
300 South Grand Ave.  
Twenty-Second Floor  
Los Angeles, CA 90071-3132  
[mhorton@morganlewis.com](mailto:mhorton@morganlewis.com)  
[dcox@morganlewis.com](mailto:dcox@morganlewis.com)  
[jennifer.kennedy@morganlewis.com](mailto:jennifer.kennedy@morganlewis.com)

Paul A. Zevnik, Esq.  
Janice L. Kopec, Esq.  
Morgan Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
[pzevnik@morganlewis.com](mailto:pzevnik@morganlewis.com)  
[jkopec@morganlewis.com](mailto:jkopec@morganlewis.com)

**Counsel for Defendant American Gaurantee & Liability Insurance Company:**

J. Randolph Evans, Esq.  
J. Stephen Berry, Esq.  
McKenna Long & Aldridge, LLP  
303 Peachtree Street, NE, Ste. 5300  
Atlanta, GA 30308-3265  
[revans@mckennalong.com](mailto:revans@mckennalong.com)  
[sberry@mckennalong.com](mailto:sberry@mckennalong.com)

James W. Bryan, Esq.  
Nexsen Pruet, LLC  
701 Green Valley Road, Suite 100  
Greensboro, North Carolina 27408  
[jbryan@nexsenpruet.com](mailto:jbryan@nexsenpruet.com)

**Counsel for Defendant Liberty Insurance Underwriters, Inc.:**

Hatcher B. Kincheloe, Esq.  
Hedrick Gardner Kincheloe & Garofalo, LLP  
P.O. Box 30397  
Charlotte, NC 28230  
[hkincheloe@hedrickgardner.com](mailto:hkincheloe@hedrickgardner.com)

**Counsel for National Union Fire Insurance Company of Pittsburg, PA:**

Susan K. Burkhart, Esq.  
Cranfill Sumner & Hartzog LLP  
PO Box 27808  
Raleigh, NC 27611-7808  
[skb@cshlaw.com](mailto:skb@cshlaw.com)

Joseph A. Hinkhouse, Esq.  
Hinkhouse Williams Walsh LLP  
180 North Stetson, Suite 3400  
Chicago, Illinois 60601  
[jhinkhouse@hww-law.com](mailto:jhinkhouse@hww-law.com)

*s/ Kimberly Sullivan*  
\_\_\_\_\_  
Kimberly Sullivan

CHARLOTTE\241166\1 099994.000